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ONE HUNDRED TENTH CONGRESS

## U.S. House of Representatives

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April 8, 2008

### MEMORANDUM FOR ALL MEMBERS, COMMITTEES, AND EMPLOYEES

**FROM:** Committee on Standards of Official Conduct  
Stephanie Tubbs Jones, Chairwoman  
Doc Hastings, Ranking Republican Member

**SUBJECT:** Post-Employment Restrictions for Staff

The purpose of this memorandum is to notify you regarding key issues of concern to staff members<sup>1</sup> who are departing from the House of Representatives or one of the legislative branch offices. The matters discussed here include post-employment restrictions, financial disclosure requirements (termination reports), and outside employment and earned income restrictions. The rules regarding seeking future employment are addressed in a separate advisory memorandum entitled "Negotiating for Future Employment." Although this memorandum will be of particular interest to departing staff, current staff and their employing Members should also familiarize themselves with these restrictions, especially the criminal restrictions on post-employment communications that have been the subject of recent attention by the United States Department of Justice. The most critical points may be summarized as follows:

A departing staff person who was paid at or above an annual rate of \$126,975 for 60 days or more during the individual's last twelve months of House employment **may not:**

- for one year after leaving employment, communicate with or appear before his or her former employing Member, committee, or office on official business, as detailed below; or
- represent, aid, or advise a foreign government or foreign political party with the intent of influencing any federal official for one year after leaving employment.

<sup>1</sup> The terms "staff," "staff person," and "employee" are used interchangeably throughout memorandum to refer to persons who are employed by a Member, committee, leadership office, or other legislative office (see note 2 below). Relevant distinctions among these categories of employees are noted as necessary. The Committee has issued a separate memorandum addressing a similar range of issues for departing Members and officers of the House.

A departing staff member who was required to file a financial disclosure statement because of the employee's rate of pay **must**:

- file a termination financial disclosure statement within 30 days of leaving the House payroll, unless the Standards Committee grants an extension of the due date.

More detailed guidance follows. We encourage you to write the Committee or to call the Committee's Office of Advice and Education at (202) 225-7103 for guidance addressed to your specific circumstances.

### **POST-EMPLOYMENT RESTRICTIONS**

The Ethics Reform Act of 1989 enacted post-employment restrictions applicable to legislative branch officials. These limitations are part of the federal criminal code (18 U.S.C. § 207(e), (f)), and they apply to Members and officers of the House, as well as to employees of House Member, committee, and leadership offices who are paid at least 75% of a Member's salary. The basic rate of pay for Members in calendar year 2008 is \$169,300, and thus the post-employment threshold for individuals who terminate their employment with a Member, committee, or leadership office in 2008 is **\$126,975**. The threshold rate for other years is available from the Standards Committee. For employees of other legislative offices,<sup>2</sup> the basic rate of pay triggering the restrictions is level IV of the Executive Schedule, which for 2008 is \$149,000.<sup>3</sup>

An employee is subject to these restrictions if the employee is paid at or above the threshold rate for at least 60 days during the one-year period preceding termination of the employee's House service.<sup>4</sup> Accordingly, it is possible for an employee who is usually paid below the threshold rate to become subject to the post-employment restrictions by the receipt of a "bonus" or merit adjustment that is paid in two or more months. Employees who are subject to the restrictions are referred to as "covered" individuals.

For covered individuals, the law establishes a one-year "cooling-off period" that is measured from the date of the individual's departure from the House payroll.<sup>5</sup> House

<sup>2</sup> "[O]ther legislative offices" include employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Printing Office, Library of Congress, Office of Technology Assessment, Congressional Budget Office, and Capitol Police. It also includes any other House legislative branch office not covered by the other provisions, such as the Clerk, Parliamentarian, Office of Legal Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

<sup>3</sup> 18 U.S.C. § 207(e)(6) & (e)(7)(B).

<sup>4</sup> 18 U.S.C. § 207(e)(7). With regard to House employees who are federal civil service or military annuitants, it is the view of the Standards Committee that the post-employment restrictions apply to those whose combined House salary and annuity were at or above the threshold rate for the specified time period.

<sup>5</sup> When, after an individual's services to the House have ceased, the office continues the individual on the payroll for the purpose of paying for accrued leave, the one-year cooling-off period will not begin until after the individual's final day on the House payroll.

employees whose pay is **below** the threshold are **not** subject to the post-employment restrictions set out in the statute, and no other provision of federal statutory law or the House rules establishes any comparable restrictions on post-employment activity.

Set out below is a detailed description of prohibited and permitted post-employment activity by covered former employees under the statute. This explanation is followed by a table that briefly summarizes the statutory restrictions. Please note that the statute, as part of the criminal code, is enforced by the Justice Department, rather than by the Standards Committee, and Committee interpretations of the statute are not binding on the Department.

### **Prohibited Activity**

Under the statute, a covered former employee may **not**, for a period of **one year** after leaving office:

- ✕ **Knowingly communicate with or appear before the employee's former employing office or committee**, with the intent to influence, on behalf of any other person, the official actions or decisions of a Member, officer, or employee in such office or on such committee.<sup>6</sup> An individual who was employed by more than one House office (*i.e.*, "shared staff") during the individual's last twelve months of employment with the House is subject to the post-employment restrictions with respect to each of the individual's employing offices if the employee's combined House salaries exceeded the triggering threshold.

The statute excepts certain representations made on behalf of specific types of entities, as described below in the context of "permissible activity." With regard to restricted activity, the statute specifically provides that:

- Covered former employees on the **personal staff** of a Member may not seek official action, on behalf of other persons, from that Member or from any of the Member's employees.
- Covered former **committee staff** may not seek official action, on behalf of other persons, from any current Member or employee of the employing committee or from any Member who was on the committee during the last 12 months the former employee worked there.<sup>7</sup> This restriction bars contacts with any of these individuals on any subject relating to official business, regardless of whether it pertains to matters within the committee's jurisdiction.

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<sup>6</sup> 18 U.S.C. § 207(e)(1) & (3)-(7).

<sup>7</sup> For the purposes of the statute, a **detailee** is deemed to be an employee of both the entity from which the detailee comes and the House committee to which the individual is detailed (18 U.S.C. § 207(g)).

- Covered former employees on the **leadership staff** may not seek official action, on behalf of other persons, from current Members of the leadership<sup>8</sup> or any current leadership staff.
- Covered former employees of any **other legislative office** may not seek official action, on behalf of other persons, from current officers and employees of that legislative office.
- ✕ **Knowingly represent a foreign government or foreign political party** before any federal official (including any Member of Congress) with the intent to influence a decision of such official in official duties.<sup>9</sup>
- ✕ **Knowingly aid or advise a foreign government or foreign political party** with the intent to influence a decision of any federal official (including any Member of Congress) in carrying out his or her official duties.<sup>10</sup>
- ✕ **Use confidential information obtained by means of personal and substantial participation in trade or treaty negotiations** within one year preceding the employee's departure from the House payroll, in the course of representing, aiding, or advising anyone other than the United States regarding those negotiations.<sup>11</sup>

As to the prohibition against making any "communication to or appearance before" one's former office, employees should be aware of the broad manner in which those terms have been defined under 18 U.S.C. § 207.<sup>12</sup> A Justice Department opinion defines "communication" as "the act of imparting or transmitting information with the intent that the

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<sup>8</sup> The "leadership" of the House of Representatives consists of the Speaker; majority leader; minority leader; majority whip; minority whip; chief deputy majority whip; chief deputy minority whip; chairman of the Democratic Steering Committee; chairman and vice chairman of the Democratic Caucus; chairman, vice chairman, and secretary of the Republican Conference; chairman of the Republican Research Committee; chairman of the Republican Policy Committee; and any similar position created after the statute took effect. 18 U.S.C. § 207(e)(9)(L).

<sup>9</sup> 18 U.S.C. § 207(f)(1)(A), (i)(1)(B). Section 207(f)(3) uses the same definitions of the terms "foreign government" and "foreign political party" as are found in the Foreign Agents Registration Act (22 U.S.C. § 611(e), (f)). These restrictions also apply with regard to any foreign commercial corporation that "exercises the functions of a sovereign." See U.S. Office of Gov't Ethics, *Summary of Post-Employment Restrictions of 18 U.S.C. § 207* at 11 (July 29, 2004) (available on the OGE website, [www.usoge.gov](http://www.usoge.gov), under the link for DAEOgrams). Also pertinent to these provisions of the statute is a U.S. Office of Legal Counsel opinion of June 22, 2004, the text of which is available under the same link on the OGE website (DAEOgram of Oct. 5, 2004), which concludes that 18 U.S.C. § 207(f) covers representational contacts with Members of Congress.

<sup>10</sup> 18 U.S.C. § 207(f)(1)(B).

<sup>11</sup> *Id.* § 207(b).

<sup>12</sup> The provisions of 18 U.S.C. § 207 should not be confused with those of the Lobbying Disclosure Act (2 U.S.C. § 1601 *et seq.*). In other words; merely because a particular activity does not constitute "lobbying" for purposes of that Act does **not** mean that the activity is permissible under 18 U.S.C. § 207.

information be attributed to the former official.”<sup>13</sup> An advisory memorandum issued by the U.S. Office of Government Ethics for executive branch employees states, “[a]n ‘appearance’ extends to a former employee’s mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States.”<sup>14</sup> The provision is broad enough that it precludes a former employee from, for example, requesting or scheduling, for or on behalf of any other person, a meeting with the individual’s former employing Member or a former colleague on official business.<sup>15</sup>

In addition to these one-year “cooling-off period” restrictions, departing employees should also be aware of a permanent federal statutory restriction that prohibits any U.S. citizen acting without authority of the United States from:

- ✗ **Directly or indirectly commencing or carrying on any correspondence or intercourse with any foreign government, or any officer or agent thereof, with the intent to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.**<sup>16</sup>

### Permissible Activity

Under federal statutory law, covered former employees **may, immediately** upon leaving office:

- ✓ **Contact Members, officers, and employees of the Senate, and – except for those officials specified above in the section on “Prohibited Activity” – Members, officers, and employees of the House and other Legislative Branch**

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<sup>13</sup> U.S. Office of Legal Counsel, “*Communications*” under 18 U.S.C. § 207 at 3 (Jan. 19, 2001) (available on the OLC website, [www.usdoj.gov/olc](http://www.usdoj.gov/olc), under the link for memoranda/opinions). In that opinion, the Office of Legal Counsel provides the following illustrative examples: “A high-ranking official who aggressively publicizes the fact that he is leaving an agency to start a one-man consulting firm, then submits a report to the agency shortly thereafter under the name of that firm, almost certainly intends that the report will be attributed to him. Similarly, a former official who is not introduced by name, but participates on a conference call with his former agency colleagues, almost certainly intends this his colleagues will recognize his voice.” *Id.*

<sup>14</sup> *Summary of Post-Employment Restrictions of 18 U.S.C. § 207*, *supra* note 9, at 3.

<sup>15</sup> Standards Committee interpretations of the statute contained in this memorandum are based on analysis of the statutory terms and purposes, and opinions and guidance issued by the Justice Department and OGE. However, as noted above, 18 U.S.C. § 207 is a criminal statute, and Committee interpretations of it are not binding on the Justice Department (*see also* note 34, below).

<sup>16</sup> 18 U.S.C. § 953 (the Logan Act). An eighteenth century law, the Logan Act restricts private correspondence with foreign governments. This statute, which appears to have been a reaction to the attempts of one citizen to engage in private diplomacy, has never been the basis of a prosecution, and this Committee has publicly questioned its constitutionality. House Comm. on Standards of Official Conduct, *Manual of Offenses and Procedures, Korean Influence Investigation*, 95th Cong., 1st Sess. 18-19 (Comm. Print 1977). Members and staff should be aware, however, that the law remains on the books.

**offices**, with intent to influence official action so long as not representing a foreign government or political party.

- ✓ **Aid or advise clients** (other than foreign governments or foreign political parties) **concerning how to lobby Congress**, provided the former employee makes no appearance before or communication to those officials specified above in the "Prohibited Activity" section. Such a "background role" would not pose the contemplated risk of improper influence since the current officials would not be aware of the former official's participation.<sup>17</sup> Any such participation must remain behind-the-scenes; thus, during the one-year "cooling-off" period, former employees must not permit their name to be openly associated with such contact by other persons.<sup>18</sup>
- ✓ **Contact Executive Branch** officials with the intent to influence official action so long as not representing a foreign government or foreign political party.<sup>19</sup>
- ✓ **Contact state government officials** with the intent to influence state government actions or decisions. Former employees should comply with any state laws governing such contacts.
- ✓ **Contact one foreign government on behalf of another** foreign government.<sup>20</sup>

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<sup>17</sup> Former employees who are lawyers should consult their local bar association concerning the application of rules governing their involvement in matters in which they participated personally and substantially as employees. A former employee who joins a law firm should also be aware that a separate statutory provision, 18 U.S.C. § 203, has been interpreted to prohibit a former federal official who joins a firm from sharing in fees attributable to representational services in federally related matters where those services were provided by the firm while the individual was still employed by the government. U.S. Office of Gov't Ethics, Advisory Opinion 99 x 24 (Dec. 14, 1999) (available on the OGE website, [www.usoge.gov](http://www.usoge.gov)).

<sup>18</sup> As noted above, the major statutory restrictions set forth in 18 U.S.C. § 207(e) focus on communications and appearances. By contrast, if a former employee plays a background role, and does not appear in person or convey his or her name on any communications, the law does not appear to prohibit that person from advising those who seek official action from the Congress. This construction is consistent with regulations promulgated by the U.S. Office of Government Ethics, interpreting a comparable prohibition that applies to executive branch personnel. See 5 C.F.R. § 2637.201(b)(3), (6). This matter is also addressed in the 2001 U.S. Office of Legal Counsel opinion that is cited in note 13 above, including with regard to activities that do not constitute permissible "behind-the-scenes" activities.

<sup>19</sup> Covered former employees who are representing a tribal government as an employee of the tribe or as an officer or employee of the United States assigned to a tribe have an additional restriction on contacts with the Executive Branch and certain other entities. Such individuals must first notify the head of the department, agency, court, or commission being contacted of "any personal and substantial involvement" in the matter while a federal employee. See 25 U.S.C. § 450i(j); 18 U.S.C. § 207(j)(1)(B).

<sup>20</sup> No federal statute expressly permits such contacts, but so far as the Committee is aware, no federal statute prohibits such contacts. Thus, it appears that such contacts are permissible under federal law. Employees who intend to undertake such activity, however, should carefully review the Foreign Agents Registration Act (22 U.S.C. §§ 611 *et seq.*) (FARA) to ensure compliance with its requirements. Briefly stated, the FARA provides that anyone who acts within the United States under the direction or control of a foreign principal to influence

- ✓ **Contact any Members, officers and employees of the House and other Legislative Branch officials** on official business under any of the following circumstances:
  - The former employee is carrying out official duties on behalf of the **federal government**;<sup>21</sup>
  - The former employee is acting as an **elected official or employee** (not as a private consultant or other independent contractor) of a **state or local government**;<sup>22</sup>
  - The former employee is an **employee** of an accredited, degree-granting **institution of higher education** located in a U.S. state or territory and is acting on behalf of such institution;<sup>23</sup> or
  - The former employee is an **employee of a charitable hospital or medical research organization** and is acting on behalf of such hospital or organization.<sup>24</sup>
- ✓ **Represent or give aid or advice to international organizations** of which the United States is a member if the Secretary of State certifies in advance that such activities are in the interest of the United States; otherwise, covered employees must wait one year before engaging in such activities.<sup>25</sup>
- ✓ **Make statements based upon the “special knowledge”** of the former employee concerning the particular area that is the subject of the statement, if **no compensation** is received in connection therewith.<sup>26</sup>
- ✓ **Give testimony under oath**, or make statements required to be made under penalty of perjury.<sup>27</sup>

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official decisions, official policies, or public opinion on behalf of a foreign principal must register with the Justice Department.

<sup>21</sup> 18 U.S.C. § 207(j)(1)(A).

<sup>22</sup> *Id.* (j)(2)(A).

<sup>23</sup> *Id.* § 207(j)(2)(B).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* § 207(j)(3).

<sup>26</sup> *Id.* § 207(j)(4).

<sup>27</sup> *Id.* § 207(j)(6).

- ✓ **Interact socially with current Members of Congress and staff** *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of any of the Members or staff specified above in the section on "Prohibited Activity." Covered former employees may also make **political contributions** to, and sponsor or attend **political fundraisers** for, current Members of Congress, subject to the same provisos.
- ✓ **Contact staff of the Clerk of the House** regarding the individual's compliance with the disclosure requirements under the Lobbying Disclosure Act.<sup>28</sup>

*Example 1.* Staff member *A*, who earns more than 75% of a Member's salary, resigns from her position on Member *B*'s personal staff. She may not lobby *B* or anyone on his staff for one year (except on behalf of an exempt organization), but she may lobby any other Member or staff member on behalf of anyone other than a foreign government or political party as soon as she leaves the House payroll.

*Example 2.* Staff member *C*, who earns more than 75% of a Member's salary, resigns from his position on the Ways and Means Committee. He may not lobby any current member or employee of Ways and Means, or any Member who was on that committee during *C*'s last year of congressional service, on behalf of any non-exempt person or entity, for one year. He may, however, lobby any other Member or staff member on any issue, except on behalf of a foreign government.

*Example 3.* Staff member *D*, who earns *less* than 75% of a Member's salary, resigns from her position on Member *E*'s staff to become a lobbyist. *D* may immediately lobby *E* or any other Member for any client.

*Example 4.* Staff member *F*, who earns more than 75% of a Member's salary, resigns from Member *G*'s staff to accept a position in an Executive Branch agency. *F* may lobby *G* immediately on behalf of the agency.

*Example 5.* Staff member *H*, who earns more than 75% of a Member's salary, resigns from his congressional position to join the staff of the Governor of his state. As a state employee, *H* may lobby anyone in Congress, including his former employing Member, on behalf of the state.

*Example 6.* Staff member *I*, who earns more than 75% of a Member's salary, resigns her congressional position and moves back to her home state. *I* may lobby state government officials on behalf of any clients.

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<sup>28</sup> *Id.* § 207(e)(8).



**Example 7.** Staff member *J*, who earns more than 75% of a Member's salary, resigns his position with Member *K* and begins work as a lobbyist at a lobbying firm. One of *J*'s clients is a state university. *J* may not lobby *K* on behalf of the university (or any other client) for one year following his departure from the House. However, if *J* were an employee of the university rather than an outside retained lobbyist, contact with *K* on behalf of the university would be permitted.

**Example 8.** Staff member *L*, who earns more than 75% of a Member's salary, resigns his congressional position to become a lobbyist. For the first year after leaving the Hill, *L* lobbies only Executive Branch personnel, and *L* has no foreign clients. *L* is complying with the law.

**Example 9.** During his final year of House employment, staff member *M* worked for Member *N* from January to June 30, and for a committee from July 1 through December 30. December 30 was *M*'s final day on the House payroll. *M* was paid more than 75% of a Member's salary. *M* may not lobby *N* or the committee for one year following his termination from each employer. Thus, *M* would be barred from lobbying *N* until July 1, and current and former members of the committee and current committee staff until December 31 of the following year.

**Example 10.** During his one-year "cooling-off" period, former staff member *M* wishes to call his former employing Member to request that she meet with representatives of one of his clients to discuss legislation of interest to the client. *O* would not be present at the meeting. *O* would violate the statute by requesting the meeting, in that the request would be a communication intended to influence official action.

**Example 11.** During his first year after leaving House employment, *P*, who had been a committee staff member paid more than 75% of a Member's salary, wishes to contact a current employee of that committee to urge him to support federal funding for a non-profit organization operated by a friend of *P*. The non-profit organization is not a client of *P*, and *P* would receive no compensation for making the contact. *P* would violate the statute by doing so, in that the statute bars such contacts regardless of whether the former employee would be compensated for them.

## Summary Table

### *Entity Contacted by Covered Former Employee*

*Entity Represented by Covered Former Employee*

	Former Congressional Office/Committee	Executive Branch	Foreign Governments	State Governments
<b>Private Entity</b>	Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	May contact immediately	May contact immediately	May contact immediately
<b>Federal, State, or Local Government</b>	May contact all Congressional offices immediately as employee or elected official of the federal, state, or local government	May contact immediately	May contact immediately	May contact immediately
<b>Tribal Government</b>	Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	May contact immediately if employed by tribe or U.S.; must inform head of agency or department of any personal and substantial involvement in matter while a House employee	May contact immediately	May contact immediately
<b>Foreign Government</b>	Must wait 1 year before contacting any Congressional office or committee directly or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	Must wait 1 year before contacting Executive Branch directly or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	May contact immediately	May contact immediately. Must register with Justice Department if acting as a foreign agent in the U.S.
<b>International Org. of which U.S. is a Member</b>	If Secretary of State approves as in national interests may immediately advise international organization and contact Congress directly. Otherwise, must wait 1 year to do either.	If Secretary of State approves as in national interests may immediately advise international organization and contact Executive Branch directly. Otherwise, must wait 1 year to do either.	May contact immediately	May contact immediately
<b>Accredited U.S. College or University</b>	May contact all Congressional offices immediately as employee of college or university	May contact immediately	May contact immediately	May contact immediately
<b>Charitable Hospital or Medical Research Org.</b>	May contact all Congressional offices immediately as employee of hospital or medical research organization	May contact immediately	May contact immediately	May contact immediately

## Penalties

Each violation of the post-employment restrictions set forth in 18 U.S.C. § 207 is a felony punishable by imprisonment up to one year (or up to five years for willful violations) and a fine of up to \$50,000 for each violation or the value of the compensation received for the act which violated the restrictions, whichever is greater.<sup>29</sup> The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.<sup>30</sup>

By their terms, the provisions of 18 U.S.C. § 207 summarized above govern the conduct of **former** Members, officers and employees, and do not apply to the conduct of **current** Members, officers and employees. However, the post-employment restrictions have been the subject of recent close attention by the United States Department of Justice, as reflected in the guilty pleas by former House staff and others to criminal violations of the statute.<sup>31</sup> Therefore, current Members and staff who receive or otherwise participate in improper contacts by a covered former employee should be aware that, depending on the circumstances, they may be subject to criminal or House disciplinary action. The recent examples involving § 207 violations indicate that a Member, House employee, or other individual who aids and abets a covered former employee in the violation may be prosecuted for conspiracy to violate the post-employment restrictions.

Furthermore, in a Standards Committee disciplinary case that was completed in the 106<sup>th</sup> Congress, a Member admitted to engaging in several forms of conduct that violated the requirement of the House Rules that each Member and staff person "conduct himself at all times in a manner that shall reflect creditably on the House."<sup>32</sup> One of those violations was his engaging in a pattern and practice of knowingly allowing his former chief of staff to appear before and communicate with him in his official capacity during the one-year period following her resignation, "in a manner that created the appearance that his official decisions might have been improperly affected."<sup>33</sup>

An employee who has any concerns about the applicability of the post-employment restrictions to the employee's proposed conduct should write to the Standards Committee to secure a written advisory opinion. While, as noted above, Committee interpretations of 18 U.S.C. § 207 are not binding on the Justice Department, those interpretations are based on the Committee's analysis of the terms and purposes of the statute, as well as any

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<sup>29</sup> 18 U.S.C. § 216.

<sup>30</sup> *Id.* § 216(c).

<sup>31</sup> See, e.g., *United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.). In addition, on September 15, 2006 the Department of Justice filed a plea agreement in which former Representative Robert W. Ney pleaded guilty to conspiracy to violate, *inter alia*, the post-employment restrictions for former covered employees.

<sup>32</sup> House Rule 23, cl. 1.

<sup>33</sup> House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-1044, 106th Cong., 2d Sess. at 10 (2000).

applicable opinions or guidance of the Justice Department or the U.S. Office of Government Ethics of which the Committee is aware.<sup>34</sup>

### FINANCIAL DISCLOSURE

A departing staff member who was required to file a financial disclosure statement because of the employee's rate of pay must file a final Financial Disclosure Statement, called a Termination Report, within 30 days of leaving the House payroll.<sup>35</sup> However, an employee in a Member's office who has filed only because the employee was designated as a "Principal Assistant" does not have to file a Termination Report unless the individual was designated as principal assistant to a Member leaving the House. Extensions of up to 90 days are available upon written request. Note that the salary threshold for filing disclosure statements is lower than that which triggers the post-employment restrictions discussed above. For 2008, the financial disclosure filing threshold is an annual salary rate of \$114,468 for 60 days or more.

The termination report, filed on the same form as the annual report, covers all financial activity through one's last day on the payroll. Schedule IX of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment. Thus, if an employee accepts a position while still on the House payroll, the employee will have to disclose the agreement on the employee's public termination filing. The date of the agreement, the employer, the position or title and the starting date must be disclosed, but the amount of the compensation need not be disclosed. The employee will also have to disclose, on Schedule VII of the report, any travel reimbursements exceeding \$335 received from any source in connection with job-search activity.

However, an employee who immediately accepts another federal position requiring the filing of a *public* financial disclosure statement need not file a Termination Report. Any employee who is not required to file a termination report for this reason must notify the Clerk *in writing* of that fact.

### OUTSIDE EMPLOYMENT AND EARNED INCOME RESTRICTIONS

Departing staff remain subject to all House rules, including the gift rule and the limitations on outside employment and earned income,<sup>36</sup> as long as they remain on the

<sup>34</sup> It should be noted that one court held that it is a complete defense to a prosecution for conduct assertedly in violation of a related federal criminal strict-liability statute (18 U.S.C. § 208) that the conduct was undertaken in good faith reliance upon erroneous legal advice received from the official's supervising ethics office. *United States v. Hedges*, 912 F.2d 1397, 1404-06 (11th Cir. 1990).

<sup>35</sup> 5 U.S.C. app. 4, § 101(e).

<sup>36</sup> House Rule 25, cl. 1-4. The outside employment and earned income limitations are also codified at 5 U.S.C. app. 4, §§ 501-502.

government payroll. These rules are particularly important to bear in mind where an employee's prospective employer suggests that he or she begin work early, including, for example, while still drawing pay for accrued annual leave.<sup>37</sup> In calendar year 2008, a covered employee may not receive outside earned income (including, for example, a signing bonus) in excess of \$25,830, and **no** earned income may be received for (1) providing professional services involving a fiduciary relationship, including the practice of law, (2) being employed by an entity that provides such services, or (3) serving as a board member or officer of any organization. Regardless of whether compensation is received, a staff member may not allow his or her name to be used by an organization that provides fiduciary services. In addition, a covered employee may not receive any honorarium (*i.e.*, a payment for a speech, article or appearance), although he or she may receive compensation for teaching, with specific prior permission from this Committee.

**Example 12.** Staff member *Q*, who earns more than 75% of a Member's salary, plans to join a law firm when he leaves his official position. Since this is a firm providing professional services of a fiduciary nature, *Q* may not commence his new employment until he is off the congressional payroll.

#### OFFICIALLY CONNECTED TRAVEL FUNDED BY A PRIVATE SOURCE

After *sine die* adjournment, it is questionable whether any employee of a departing Member may participate in any privately funded travel that is factfinding in nature. The gift rule requires that such travel be related to official duties,<sup>38</sup> but as of that time, the official responsibilities that may justify participation in such a trip will practically have come to an end. However, this consideration does not limit the ability of an employee of a departing Member to accept travel from a private source for the purpose of enabling the individual to participate substantially in an officially related event, such as to give a speech.

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Any questions on these matters should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

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<sup>37</sup> Staff members contemplating future employment with the U.S. Senate, the Architect of the Capitol or any other department or agency of the U.S. government should bear in mind that federal law prohibits "dual compensation" in excess of an annually-adjusted dollar limit for simultaneous employment by the House and any of those entities. 5 U.S.C. § 5533(c)(1). For 2007, the limit was \$30,826, but it is likely to increase slightly for 2008. Pursuant to the statute, a departing House employee may not commence employment with any of the above-named governmental entities while receiving from the House payments for accrued annual leave if the employee's aggregated gross annual salaries would exceed the statutory limit.

<sup>38</sup> House Rule 25, cl. 5(b)(1)(A).